U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5082984

Date: JAN. 14, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an immunologist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement

(that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner indicates employment as an assistant research scientist in the Department of Microbiology and Immunology at the University of [redacted].[1] Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed papers for journals. In addition, he authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that he meets an additional criterion, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner contends that the Director provided an "improper evaluation of [his] eligibility." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

At the outset, the Petitioner asserts that he "holds the position of Associate Editor," "performs manuscript review for many of the top scientific journals in his field," and "had completed manuscript review at least 70 times already at the time of his filing." In addition, the Petitioner argues that he "has authored at least 26 scientific papers documenting his original research in the field of immunology." As previously discussed, we have already considered the Petitioner's manuscript review and authorship of papers under the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly

[1] *See* the Petitioner's curriculum vitae and employment verification letter submitted at initial filing.

articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence relating to these criteria. Further, the Petitioner did not demonstrate how his associate editor position and manuscript review experience resulted in original contributions of major significance in the field. Moreover, publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115.[2]

As it relates to the citation of his work, the Director indicated that "the evidence, while demonstrating original contributions, did not establish original contributions of major significance in a field whose very top scientists (according to Google Scholar) have garnered citations numbered well into the thousands." In general, the comparison of the Petitioner's cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor in a final merits determination if the Director determined he met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. However, the comparison of citations to a particular scientific article may be relevant for this criterion in order to establish the overall field's general view of a contribution of major significance.

In addition, the Petitioner contends that his published articles "had received 467 citations already at the time of his filing."[3] As it relates to the cumulative citations of his work, this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify his original contributions and explain why they are of major significance. Here, the Petitioner did not demonstrate how his cumulative number of citations pinpoints to which authored articles or findings represents contributions of major significance in the field. Moreover, aggregate citation figures tend to reflect a petitioner's overall publication record rather than identifying which research the field considers to be majorly significant.

The record reflects that the Petitioner initially submitted evidence from *Google Scholar* reflecting that his three highest cited articles received 41 (*Cell Host & Microbe*), 39 (*Cellular and Molecular Immunology*), and 38 (*Mechanisms of Ageing and Development*) citations, respectively.[4] Again, this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently shown that his citations for any of his published articles are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to his articles. For

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[2] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[3] The Petitioner also claims that his published articles have now received 544 citations. However, the Petitioner did not provide any supporting documentation to corroborate his assertions.

[4] The Petitioner did not specify how many citations, if any, for each of his individual articles contained self-citations. Moreover, in response to the Director's request for evidence, the Petitioner submitted an updated *Google Scholar* list reflecting a nominal increase of citations to his individual articles. Further, the Petitioner did not demonstrate how many of the additional citations occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1).

example, he did not demonstrate that these citations are unusually high in his field or how they compare to other articles that the field views as having been majorly significant. Although his citations are indicative that his research has received some attention from the field, the Petitioner did not establish that his citation numbers to his individual articles represent majorly significant contributions in the field.[5]

Further, the record indicates that the Petitioner submitted excerpts of articles, including international articles, which cited to his work. A review of those articles, though, do not show the significance of the Petitioner's research in the overall field beyond the authors who cited to his work.[6] For instance, the Petitioner provided a partial article entitled, [redacted] (*PLOS Pathogens*), in which the authors cited to his highest cited article in *Cell Host & Microbe*.[7] However, the article does not distinguish or highlight the Petitioner's written work from the other 58 other cited papers. Moreover, the paper does not indicate that the Petitioner's article is authoritative or otherwise viewed as being majorly significant in the field. In the case here, the Petitioner has not shown that his published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

In addition, the Petitioner claims that "nine of [the Petitioner's] papers ranked among the top 1% and top 10% most cited across his entire field for their respective publication years already at the time of his filing." The record reflects that the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including immunology. Further, the Petitioner presents a document that appears to be self-compiled regarding his citation count percentiles and paper count percentiles. The Petitioner claims that the data was derived from "Microsoft Academic" and compares his research impact to that of other researchers in immunology, respiratory distress, Middle East respiratory syndrome coronavirus, and infection control.[8]

The comparative ranking to baseline or average citation rates, however, does not automatically establish majorly significant contributions in the field.[9] Once again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where his citation rates rank among the averages of others in his field. Here, a more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other

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[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (providing an example that peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[7] Although we discuss a sample article, we have reviewed and considered each one.

[8] The Petitioner did not indicate whether he factored in any self-citations in compiling his baseline percentages from Clarivate Analytics or "Microsoft Academic."

[9] For instance, according to the data from Clarivate Analytics, immunology papers published in 2017 receiving only seven citations and in 2018 receiving only two citations are in the top 10%. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top 10% of most highly cited articles according to year of publication.

corroborating evidence. The Petitioner has not demonstrated, as he asserts, that nine of his articles, using Clarivate Analytics methodology through citation numbers and percentiles, resulted in original contributions of major significance in the field.

Moreover, the Petitioner argues that his "scientific papers have been published in many of the leading journals in his – or any – scientific field." However, the Petitioner has not established that publication of his articles in highly ranked or popular journals demonstrates that the field considers his research and work to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor reflects the publication's overall citation rate; it does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. Here, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field. Again, we considered the Petitioner's publications in journals under the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi).

Furthermore, the Petitioner contends that his "research has been funded by prestigious institutions, including the National Institute of Aging" and his "research has led directly to clinical trials at the National Institute of Allergy and Infectious Diseases." Once again, the issue is not who funded his research or the reputations of entities who conducted clinical trials but whether his research qualifies as an original contribution of major significance in the field. Moreover, receiving funding to conduct research is not a contribution of major significance in-and-of-itself. Rather, the Petitioner must establish that receiving grants or other similar funding reflects the major significance of his past work, or that his research conducted with the funding resulted in contributions of major significance.

The record reflects that the Petitioner submitted two articles and a press release reporting on the results of a phase one trial. However, the Petitioner did not show that such limited media coverage indicates original contributions of major significance in the field. For example, he did not demonstrate that his research and findings resulted in widespread coverage and interest. Instead, the evidence speculates on the possibility of having an impact at some point in the future, such as "[a]n experimental treatment developed from cattle plasma [redacted] shows broad *potential*," "[t]he researchers believe they *may* be able to use [redacted] cattle to rapidly produce [redacted]" "they *could conceivably*.develop antibody treatments," "it *could* mean [redacted] cattle, and their antibodies, *could* be used to treat other infectious diseases," and "[the] study is noteworthy not only be advancing a *potential* therapeutic for [redacted] but also by showing the *potential* safety of a novel production platform" (emphasis added). While the Petitioner's research may show promise, he did not establish how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of his work has yet to be determined.[10]

Finally, the Petitioner argues that he provided "5 advisory opinions from independent experts who have attested to the major significance of his original contributions."[11] In general, the letters recount

[10] One article also indicates that "[t]he next step is a larger phase II study in a population that is infected with [redacted] which *could* demonstrate that the [] treatment is safe in that population and begin to evaluate whether the treatment is effective" (emphasis added), suggesting that his research is still ongoing, and the significant impact has not been gauged or measured in the field.

[11] The record contains six recommendation letters.

the Petitioner's research and findings, indicate their publications in journals, and point to the citations of his work by others. Although they reflect the novelty of his work, they do not sufficiently articulate how his research and findings have been considered of such importance and how their impact on the field rises to the level of major significance required by this criterion. For instance, [redacted] claimed that the Petitioner's "research contributes to the development of more effective immunization protocols by presenting a new method for generative protective immunity against SARS, SARS-like viruses, as well as emerging and re-emerging virus infections like the flu or a long period of time."[12] However, [redacted] did not further elaborate and discuss which immunization protocols were developed based on the Petitioner's research and how they have impacted SARS, SARS-like viruses, and the flu. Moreover, [redacted] asserted that the Petitioner's "research has a broad impact on safeguarding patients against deadly viruses." Again, [redacted] did not explain how the Petitioner's research has broadly safeguarded patients and influenced the overall field rather than referencing his research in a journal article involving a mouse model.

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[13] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[14] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered

[12] While we discuss a sampling of letters, we have reviewed and considered each one.
[13] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.
[14] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has reviewed manuscripts, conducted research, and authored scholarly articles, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.